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Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

August 13, 1980

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ARIZONA ATTORNEY GENERAL

INTERAGENCY
Mr. Ted Williams
Deputy Director
Arizona Department of
Health Services
1740 West Adams
Phoenix, AZ 85007

Re: I80- 157 (R80-111)

Dear Mr. Williams:

Your letter of May 12, 1980, requests our consideration of the following question:

If a facility is offering supervisory care services as defined in A.R.S. § 36-401.26 to five or fewer residents, but there are more than five persons who reside in the facility, does the facility require a supervisory care license?

Persons who establish, conduct or maintain a health care institution or any class or subclass of health care institution are required to have a license insured by the Arizona Department of Health Services^{1/} unless exempt.^{2/} The term "health care institution is defined^{3/} to mean

. . . every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health related services or supervisory care services.

^{1/}A.R.S. § 36-407.A.

^{2/}A.R.S. § 36-402, infra.

^{3/}A.R.S. § 36-401.11.

Mr. Ted Williams
August 13, 1980
Page 2

A.R.S. § 36-402 in pertinent part provides:

Nothing in this chapter or the rules and regulations adopted under the provisions of this chapter authorizes the licensure, supervision, regulation or control of:

* * *

6. Institutions providing supervisory care services to five or fewer ambulatory persons unrelated to the administrator or owner of such institution, unless the administrator or owner requests licensure, supervision, regulation or control.

In summary of the foregoing, it is evident that every place at which facilities with supervisory care services are provided is a health care institution, but only persons who maintain a place at which such services are provided to more than five persons may be required to have a license.^{4/} The key is not the number of persons who reside at such a place, building or institution, but rather, the number of persons unrelated to the owner or administrator to whom supervisory care services are provided.

Our answer to your question, therefore, is no.

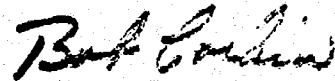
Your letter directs our attention to the definition of "supervisory care homes" contained in A.R.S. § 401.25. We are unable to locate any other reference in Chapter 4 to the term defined. We note, however, that the language of the definition is very similar to paragraph 6 of A.R.S. § 36-402, quoted above, and therefore, if pertinent would support the same conclusion.

^{4/}This exemption, of course, does not apply to exempt from the application of chapter 4, those places, institutions, buildings or agencies which are otherwise subject to its provisions because one or more of its residents require or receive medical, nursing or health related services.

Mr. Ted Williams
August 13, 1980
Page 3

If we can be of further assistance concerning this matter, please advise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC/eb